

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

FRANK E. VOTH,

CV. 09-423-HA

Plaintiff,

ORDER

v.

DON MILLS,

Defendant.

HAGGERTY, District Judge.

Plaintiff has had at least three cases dismissed as frivolous or for failure to state a claim. As such, he is not entitled to proceed *in forma pauperis* unless he is in imminent danger of serious physical injury. 28 U.S.C. § 1915(g). In this case, plaintiff filed a Complaint alleging that he was in imminent danger at the Two Rivers Correctional Institution ("TRCI"). As a result, the court allowed him to proceed *in forma pauperis*. Since that time, plaintiff has been transferred from TRCI to the Snake River Correctional Institution ("SRCI"). As a result of the transfer,

defendant asks this court to vacate its Order granting plaintiff *in forma pauperis* status.

Although plaintiff was transferred to SRCI on June 17, 2009, the court declines to rescind its *in forma pauperis* designation because plaintiff met the threshold requirements for *in forma pauperis* status at the time of filing. *Andrews v. Cervantes*, 493 F.3d 1047, 1053 (9th Cir. 2007) (imminent danger exception to three-strikes provision turns on the conditions prisoner faced at time of filing). Plaintiff's transfer does, however, moot his Motion for Temporary Restraining Order and Preliminary Injunction [18].

CONCLUSION

Defendant's Motion to Vacate Plaintiff's *In Forma Pauperis* Status [16] is DENIED. Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction [18] is DENIED on the basis that it is now moot.

Defendant's Motion for Extension of Time [22] is GRANTED. Defendant shall have 30 days in which to respond to plaintiff's Motion to Amend [20] and Motion for Injunctive Relief [19].

IT IS SO ORDERED.

DATED this 15th day of July, 2009.

/s/Ancer L. Haggerty
Ancer L. Haggerty
United States District Judge